IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

ANDREANA SMITH, ANTONIA ROBLES and)
CARMEN FLORES, individually and on behalf)
of all others similarly situated,)
<u>.</u>) Case No. 07 C 5939
Plaintiffs,)
) Judge Guzman
v.)
) Magistrate Judge Ashman
CREDIT UNION 1,)
)
Defendant.)

PLAINTI FFS' ACCEPTANCE OF DEFENDANT'S RULE 68 OFFER OF JUDGMENT ON COUNT II AND PRESERVING THE CLAIMS IN COUNT I

- 1. On February 28, 2008 Defendant issued two separate offers of judgment to the Plaintiffs in this action. See Exhibit A and B.
- 2. The first offer of judgment pertained solely to the Plaintiffs' claims raised under the Electronic Funds Transfer Act, 15 U.S.C. § 1693 et seq., in Count I. See Exhibit A. Count I arises from the Defendant's failure to provide a proper notice of the ATM surcharge fee being imposed upon non-credit union customers withdrawing money from the credit union's ATM.
- 3. The second offer of judgment pertained solely to the Plaintiffs' claims raised under the Expedited Funds Availability Act, 12 U.S.C. § 4001 *et seq.*, in Count II. *See* Exhibit B. Count II arises from the Defendant's failure to post a notice as to the availability of funds deposited with the credit union's ATM.
- 4. Each of these Counts give rise to separate claims for statutory damages to the Plaintiffs and the respective classes.
- 5. Plaintiffs have elected to not accept the offer of judgment as to Count I and proceed with the litigation as to that Count.

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6. Plaintiffs have elected to accept the offer of judgment as to Count II and therefore, seek Court approval as to acceptance of this offer of judgment under Rule 23. See Exhibit C.

WHEREFORE, Plaintiffs request that judgment be entered against Defendant, pursuant to the terms of the Offer of Judgment as to Count II, subject to Rule 23 court approval.

Respectfully submitted,

By: /s/ Lance A. Raphael
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